

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

LISA BROCHEY,

Plaintiff,

vs.

REPUBLIC AIRWAYS, INC., and
DELTA AIR LINES, INC.

Defendants.

CIVIL ACTION

No:

Removed from the State of New
York Supreme Court, County of Erie
Index No.: 816565/2021

DEFENDANTS' NOTICE OF REMOVAL

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendants REPUBLIC AIRWAYS INC., (“Republic”) and DELTA AIR LINES, INC. (“Delta”) hereby remove the above-captioned civil action in its entirety from the State of New York Supreme Court, County of Erie, Index No. 816565/2021, to the United States District Court for the Western District of New York. In support of their Notice of Removal, which is based on diversity jurisdiction, Republic and Delta state as follows:

1. This is a personal injury action arising out of an incident which is alleged to have occurred on or about December 17, 2018, onboard Delta Connection flight 6053 operated by Republic from Buffalo, New York to LaGuardia International Airport.
2. Pursuant to Local Rule 81(a)(3)(A), an index identifying each document filed and/or served in the state court action is attached as Exhibit A. The documents listed in chronological order within the Index are also filed individually herewith.

3. On December 10, 2021, Plaintiff filed a Summons and Complaint against Republic and Delta in the State of New York Supreme Court, County of Erie, Index No. 816565/2021 asserting negligence. (*See* Summons and Complaint, dated December 10, 2021, attached as Exhibit B).

4. In her Complaint, Plaintiff alleges she was injured when an unsecured food and/or beverage cart rolled down the aisle and struck her head. (Exhibit B, ¶ 8).

5. Republic and Delta were separately served with a copy of Plaintiff's Complaint on December 16, 2021. (*See* Affidavits of Service attached as Exhibit C). Plaintiff's Complaint did not allege an amount in controversy.

6. On August 17, 2022, Plaintiff served her Verified Bill of Particulars, in which she stated that her total lost earnings is \$50,000 and her estimated loss of future earnings is \$100,000. (*See* Exhibit Q, at pp. 20-21).

7. On or about August 24, 2022, Plaintiff served her Response to Demand Pursuant to CPLR 3017(c), in which she claimed damages in the amount of \$500,000. (*See* Exhibit W).

8. This Notice of Removal is being filed within 30 days of Defendants' receipt of Plaintiff's discovery responses, including her CPLR 3017(c) response that alerted Republic and Delta that the amount in controversy exceeds the amount specified in 28 U.S.C. § 1332(a) and is therefore timely under 28 U.S.C. § 1446(b)(1).

9. 28 U.S.C. § 1441(a) authorizes removal of any civil action brought in a state court of which the district courts of the United States have original jurisdiction. Original jurisdiction exists pursuant to 28 U.S.C. § 1332 where there is a civil action in which the amount in controversy exceeds \$75,000, exclusive of interest and costs, and is between citizens of different States.

10. Here, there is complete diversity of citizenship between Plaintiff and Defendants under 28 U.S.C. § 1332(a)(1). Plaintiff is a citizen of the State of New York. (Exhibit B, ¶ 1). For diversity purposes, “a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.” 28 U.S.C. § 1332(c)(1). Delta is incorporated in Delaware and has its principal place of business in Georgia. (Exhibit B, ¶ 2). Republic is incorporated in Delaware and has its principal place of business in Indiana. (Exhibit B, ¶ 3). Since Plaintiff and Defendants are citizens of different states, there is complete diversity of citizenship between them.

11. Plaintiff alleges that this action is a civil action involving an amount in controversy exceeding \$500,000, exclusive of interest and costs. (Exhibit W).

12. Accordingly, pursuant to 28 U.S.C. § 1446(c)(2)(A)(ii), Republic and Delta assert that the amount in controversy exceeds \$75,000, exclusive of interest and costs. *See Remy v. Savoie*, Case No. 17-CV-00663 (DLI)(RER), 2017 WL 639251, at *1 (E.D.N.Y. Feb. 16, 2017), citing *Lupo v. Human Affairs Intern., Inc.*, 28 F.3d 269, 273-74 (2d Cir. 1994).

13. The United States District Court for the Western District of New York is the federal court embracing the State of New York Supreme Court, County of Erie, which is the place where the original action was filed. Thus, venue and removal to this Court are proper under 28 U.S.C. § 1446(a).

14. Pursuant to 28 U.S.C. § 1446(d), Republic and Delta will promptly serve a copy of this Notice of Removal on Plaintiff and will promptly file a Notice of Filing of this Notice of Removal with the Clerk of the State of New York Supreme Court, County of Erie.

15. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81(a)(3)(B), Republic and Delta have attached copies of all process and pleadings served upon it, and each document filed and/or

served in the state court action.. Pursuant to Local Rule 81(a)(3)(B), discovery materials are not attached except to the extent necessary to establish the timeliness and propriety of this removal. Notably, several exhibits to Defendants' state-court motion to compel disclosure are omitted because they were discovery materials that did not pertain to the amount in controversy.

16. The undersigned counsel has been specifically authorized to act on behalf of Republic and Delta in seeking removal of this cause of action to the United States District Court for the Western District of New York. Further, the undersigned counsel is a licensed attorney in the State of New York and is authorized to practice in the United States District Court for the Western District of New York.

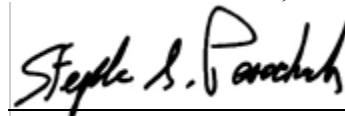
17. By filing this Notice of Removal, Republic and Delta do not waive, and hereby reserve, all rights to assert objections and defenses to Plaintiff's Complaint.

WHEREFORE, Defendant REPUBLIC AIRWAYS INC. and DELTA AIR LINES, INC. hereby remove this action from the State of New York Supreme Court, County of Erie, to the United States District Court for the Western District of New York.

Dated: September 13, 2022

Respectfully submitted,

**REPUBLIC AIRWAYS, INC. and
DELTA AIRLINES, INC.**



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